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In the Supreme Court of the United States

OCTOBER TERM, 1975

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

T.I.M.E.-D.C., INC., PETITIONER

v.

UNITED STATES OF AMERICA AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1–44)[1] is reported at 517 F. 2d 299. The final order of

[1] "Pet. App." references are to the petition in No. 75–636.

the district court (Pet. App. 94–116) and the order of the district court amending its final order (Pet. App. 117–118) are unreported. Opinions of the district court are set forth at Pet. App. 45–49, 50–55, 56–78, and 79–84. The district court's decree in partial resolution of the suit is set forth at Pet. App. 85–93.

JURISDICTION

The judgment of the court of appeals was entered on August 8, 1975. A timely petition for a writ of certiorari was filed in No. 75–636 on October 29, 1975, and in No. 75–672 on November 6, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court and the court of appeals correctly found, on the basis of statistical evidence and extensive pretrial and trial testimony concerning individual acts of discrimination, that T.I.M.E.–D.C. had engaged in a pattern of discriminatory employment practices against blacks and Spanish-surnamed persons in violation of Title VII of the Civil Rights Act of 1964.

2. Whether the court of appeals correctly ruled that a company seniority system that penalizes employees who transfer from one job classification to another perpetuates the effects of a pattern of exclusion of blacks and Spanish-surnamed employees from higher paying, more attractive, traditionally white jobs, in violation of Title VII.

3. Whether the court of appeals correctly ruled that a company seniority system that perpetuates discrimination in violation of Title VII should be temporarily modified to permit members of the class of blacks and Spanish-surnamed employees who qualified for the better paying jobs but were assigned to less desirable, lower paying jobs because of their race and national origin to transfer to and compete for the traditionally white jobs on the basis of their seniority with the company, rather than on the basis of seniority in the traditionally white job.

4. Whether the court of appeals correctly ruled that the International Brotherhood of Teamsters is an adequate representative of the seniority interests of its members and that the local unions are not indispensable parties to this litigation.

STATUTE INVOLVED

Relevant provisions of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. (Supp. IV) 2000e, *et seq.*, are set forth at Pet. App. 119–124.

STATEMENT

These petitions arise out of two cases brought by the United States [2] against T.I.M.E.–D.C. (and its prede-

[2] Pursuant to Section 707(d) of the Equal Employment Opportunity Act of 1972, 42 U.S.C. (Supp. IV) 2000e–6(d) (Pet. App. 124), the Equal Employment Opportunity Commission became a party to this litigation after the cases had been argued in the court of appeals. By order of the court of appeals, the United States remained a party.

cessor, T.I.M.E. Freight, Inc.), a common carrier by motor freight, under Section 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. (Supp. IV) 2000e-6 (Pet. App. 122), alleging a pattern of employment practices that discriminated against blacks and Spanish-surnamed persons on the grounds of race and national origin. The first suit, charging petitioner T.I.M.E.–D.C. with a pattern and practice of discrimination at its Nashville terminal, was filed on May 15, 1968, in the Middle District of Tennessee and named Local 480 of the Teamsters as a defendant. The second suit, against T.I.M.E.–D.C. and the International Brotherhood of Teamsters, was filed on January 14, 1971, in the Northern District of Texas and challenged the employment practices throughout T.I.M.E.–D.C.'s operations, which include 51 terminals in 26 states (Pet. App. 3–5). The two cases were consolidated and trial was held in May 1972 (Pet. App. 8).

1. *The facts.* Many of the facts were stipulated, and the remainder either were undisputed or were found by the district court and sustained by the court of appeals.

Petitioner T.I.M.E.–D.C. is an interstate common carrier operating a motor freight system from coast to coast, with headquarters in Lubbock, Texas. Is is a product of approximately 10 mergers over a 17- year period. Nonmanagerial employees of the company represented by the Teamsters are divided into four bargaining units—line (or road), city, garage, and clerical (Pet.

App. 5–6). Line drivers generally earn more per year than city employees (in 1969, an average of from $1,300 to $4,700 more), and the line driver job is generally considered more desirable, because of both the higher pay and the fact that city drivers have to unload their own trucks (Pet. App. 6, n. 7, 59; Pl. Ex. 231; Pl. Ex. 230). Moreover, T.I.M.E.–D.C.'s major terminals employing line drivers are located in metropolitan areas of substantial minority population, such as Los Angeles, Memphis, Denver, Nashville, Oklahoma City, Chicago and Atlanta (Pet App. 18–19, 68–72).

As of March 31, 1971, T.I.M.E.–D.C. had 6,472 employees, of whom 314 (5%) were black and 257 (4%) were Spanish-surnamed American. An overwhelming majority of the black (83%) and of the Spanish-surnamed American (78%) employees, however, were concentrated in city (city driver, dockman and hostler), garage (serviceman and tireman) and janitor jobs, while the large majority of the white employees were in line driver, office, and supervisory jobs (Pet. App. 18, 21, n. 24). For example, as of March 31, 1971, T.I.M.E.–D.C. had 1,828 employees in the position of line driver, of whom only 8 (0.4%) were black and only 5 (0.3%) were Spanish-surnamed. When the government's first suit was filed in May 1968, T.I.M.E.–D.C. had no black line drivers; the first employed by the company was hired in 1969 (Pet. App. 19). Indeed, with the exception of one driver at the Chicago terminal during the 1950's, no black had ever

been employed prior to 1969 on a regular basis as a line driver by T.I.M.E.–D.C. or any of its predecessor companies (Pet. App. 19–21).

Numerous experienced and qualified black and Spanish-surnamed truck drivers had applied for line driver positions and had their requests ignored, or were denied employment after being given false and misleading information about requirements, opportunities and application procedures (Pet. App. 60–61). Many other black and Spanish-surnamed city drivers who met the qualification standards and sought transfer to a line driver position were either denied the opportunity to do so or were not allowed to transfer on the same basis as white employees (Pet. App. 61). At the Nashville terminal—the subject of the initial Title VII action—blacks were employed only as servicemen (which pays less than dockmen, hostler, city driver, partsman and mechanic) until April 1968, and the company did not train blacks to be mechanics, partsmen or shop supervisors (Pet. App. 21–22, 61; Pl. Exs. 66, 204).

Petitioner International Brotherhood of Teamsters ("Teamsters") is a highly centralized international union (Pet. App. 17). The constitution of the Teamsters confers on the General Executive Board authority to interpret and apply the constitution and to decide all questions of law (subject to appeal at the next Convention) and grants it "governing authority over the International Union and its subordinate bodies" (Appendix, *infra,* p. 1A). Each Area Conference of the Teamsters (Eastern, Southern, Western

and Central) is a subordinate body of the International and is "subject to the unqualified supervision, direction and control of the General President" (Appendix, *infra,* p. 2A). Moreover, it is compulsory for every local union of the Teamsters to accept a transfer of a union member from another local union without additional charge (Appendix, *infra,* pp. 1A–2A).

The bylaws of each local union are subject to the approval of the General President, who also has the power to place a local union into trusteeship if he believes that the local is not being operated for the benefit of the membership (Appendix, *infra,* pp. 6A–7A); and if a majority of local unions vote to hold area, national or industry-wide negotiations, all involved local unions "must participate" and "shall be bound" by the contract, if approved by the "membership covered by said contract proposal" (Appendix, *infra,* p. 3A).

All of T.I.M.E.–D.C.'s line drivers, and the vast majority of its city employees and servicemen, work under a National Master Freight Agreement that is negotiated every three years on a nationwide basis by the National Over-the-Road and City Cartage Policy and Negotiating Committee of the Teamsters, whose members are appointed by the General President of the International. Each local union gives the Committee a power of attorney to negotiate on its behalf (Pet. App. 17). Regional supplements to the National Master Freight Agreement are negotiated at the same time and place, and the National Agreement and the area supplements are subject to acceptance by a nationwide majority vote of Teamsters affected (Pet.

App. 17). Although the local unions, rather than the International, sign the National Master Freight Agreement and the area supplements, such signing has little significance, since under the constitution the collective bargaining agreement is binding on all involved locals and their members as soon as it is approved by a majority of the members voting (even if disapproved by majority vote of a particular local) (Appendix, *infra*, pp. 3A–4A).

The collective bargaining agreements in effect at all material times provided for separate area and local supplements for each of the four bargaining units—line (or road drivers), city, garage, and clerical. Seniority is maintained separately within each unit (Pet. App. 6, 7). While nothing in the collective bargaining agreements prohibits the transfer of an employee from one unit to another, an employee who transfers maintains his company seniority only for fringe benefits (such as vacation rights) and is treated for purposes of layoffs and other bidding as a new employee in the transferee unit (Pet. App. 7). Thus, if a city driver, dockman or serviceman transferred to a line driver position, he would lose all of his previously earned seniority for layoff and other bidding purposes and would accrue such seniority only from the date he began work as a line driver (Pet. App. 7).

2. *The district court's decision.* Prior to trial, the Teamsters moved to dismiss or for a stay on the ground that the local unions were signatory parties to the collective bargaining agreements in question and hence were necessary parties to the litigation.

T.I.M.E.–D.C. also moved to dismiss on the ground of failure to join the locals as indispensable parties.[3] After determining that the Teamsters actively control the negotiations and terms of the collective bargaining agreements, the district court denied the motions, holding that ample relief could be afforded in a decree running against the Teamsters (Pet. App. 52–53).

After trial but prior to the court's decision, the government and T.I.M.E.–D.C. entered into a consent decree in partial resolution of suit, which was submitted to and approved by the district court on May 12, 1972 (Pet. App. 85–93). The consent decree, which admitted no liability, required T.I.M.E.–D.C. to undertake a recruitment campaign aimed at the black and Spanish-surnamed communities, set out minimum qualification standards for the major job classifications, and, subject to the availability of qualified applicants, provided for the hiring of blacks and Spanish-surnamed Americans in the ratio of one for one (50%) until the percentage of such minorities in each classification equaled the percentage of black and Spanish-surnamed Americans in the work force in the relevant city or Standard Metropolitan Statistical Area. T.I.M.E.–D.C. also was required to pay $89,500

[3] The United States then sought to add Local 745 of Dallas as an additional defendant individually and as representative of the class of local unions. The court allowed the government to join Local 745 as an individual defendant but not as a class representative (Pet. App. 48–49). The United States declined to add the local individually or to proceed against individual locals in other parts of the country. No local union moved to intervene to represent its interests.

in settlement of back pay claims of alleged individual and class discriminatees, and $5,000 in cost of depositions (Pet. App. 90–92).

The only issues remaining for resolution by the district court after the consent decree concerned whether there had been a pattern and practice of discrimination in T.I.M.E.–D.C.'s operations and, if so, whether and to what extent seniority and transfer rights of incumbent black and Spanish-surnamed employees should be affected. On the basis of statistical analysis and extensive evidence from live witnesses and depositions, the district court found that defendant T.I.M.E.–D.C. and its predecessors had engaged in a pattern and practice of discrimination in violation of Title VII and that the seniority provisions of the collective bargaining agreements, while neutral on their face, operated to perpetuate the effect of these prior discriminatory practices by impeding the free transfer of minority employees to the more desirable jobs (Pet. App. 61).

The court then turned to the question of remedy. Subsequent to trial, at the court's request, the government had submitted a list of more than 300 incumbent black and Spanish-surnamed employees hired prior to March 1971, who were in its view entitled to transfer to traditionally white jobs without losing their accumulated seniority, provided they were qualified and desirous of transferring (Pet. App. 12, 16). The court ruled that while all persons listed by the

government were members of the class affected by T.I.M.E.–D.C.'s discriminatory practices, not all class members had offered specific evidence of injury. Therefore, the court allowed only 29 incumbent employees, as to whom "the evidence clearly show[ed] * * * discrimination in the hiring and promotional practices of defendant T.I.M.E.–D.C." (Pet. App. 73; see also Pet. App. 63, 75), to transfer to line driver or other traditionally white positions, as vacancies occurred, with seniority in that unit dating back no further than July 2, 1965 (the effective date of Title VII).

Four other incumbent employees were granted retroactive seniority only to January 14, 1971 (the date of filing the systemwide pattern and practice suit against T.I.M.E.–D.C.), because the evidence regarding them showed "that these individuals were very possibly the objects of discrimination" and that they were likely harmed by such discrimination but was "not sufficient to show clear and convincing specific instances of discrimination" or harm resulting therefrom (Pet. App. 77). The remainder of the more than 300 discriminatees was granted priority in hiring (if qualified), but not retroactive seniority (Pet. App. 65).

3. *The decision of the court of appeals.* The government, the Teamsters and T.I.M.E.–D.C. appealed. On petitioners' appeal, the court of appeals agreed with the district court that the local unions were not indispensable parties because the International plays a

major role in the negotiation of the collective bargaining agreements while the locals play little if any meaningful role and because the International adequately represents the seniority status of its members (Pet. App. 16–18). The court of appeals ruled in addition that the district court's findings of a pattern and practice of discrimination were not clearly erroneous, because the statistical evidence, plus the massive amount of testimony presented at trial as well as by depositions,[1] were sufficient to sustain the district court's conclusions (Pet. App. 18–29).

Furthermore, in accord with a line of cases dating from *Local 189, United Papermakers & Paperworkers* v. *United States*, 416 F. 2d 980 (C.A. 5), certiorari denied, 397 U.S. 919, the court of appeals ruled that a seniority system that tended to keep blacks and Spanish-surnamed persons in the jobs to which they had been discriminatorily assigned was unlawful, and that the employer and union were obliged to permit all such qualified persons to transfer to traditionally white jobs (such as line driver) with the seniority they had earned in their prior jobs, and to use that seniority in later bidding for promotion, layoff and other competition, subject only to the proviso that such persons should not obtain a seniority date earlier than that on which they were first qualified for the new position (Pet. App. 30–35).

[1] In addition to the witnesses who testified at trial, the government introduced the testimony of over 90 witnesses through depositions or summaries of depositions (Pet. App. 8).

ARGUMENT

The decisions of both courts below that the government proved a pattern of discriminatory employment practices and that the International Brotherhood of Teamsters was an adequate representative of the seniority interests of its members are extensively supported by the record in this case and are in accord with well settled principles of law and the decisions of other courts of appeals. On the seniority issues, too, the decision of the court of appeals is in accord with the accepted principle of "rightful place" for incumbent minority employees assigned to low paying or otherwise undesirable jobs on the basis of race and national origin. That principle has been adopted by all the circuits that have been faced with such seniority issues. Review by this Court, therefore, is not warranted.

1. Based upon the facts that T.I.M.E.–D.C. had no black line drivers until 1969 and that as of March 31, 1971 (two months after suit was filed) it had only eight blacks (0.4%) and five Spanish-surnamed Americans (0.3%) among its 1,828 line drivers, as well as a massive amount of testimony concerning individual acts of discrimination, the district court correctly found that T.I.M.E.–D.C. had followed a pattern of excluding blacks and Spanish-surnamed Americans from traditionally white jobs (such as line drivers); the court of appeals properly sustained that finding. Similar findings of discrimination, and in particular the exclusion of minorities from line driver

positions, have been made and sustained in every appellate decision on the merits we have found concerning a carrier in the trucking industry, as well as in a host of district court decisions in that industry.[5]

Concurrent findings of two lower courts are considered final by this Court in the absence of a very exceptional showing of error, *Comstock* v. *Group of Institutional Investors,* 335 U.S. 211, 214, and there has been no such showing in this case. Petitioners principally attack the reliance by the courts below upon employment statistics as of March 1971, and refer instead to progress made in minority hiring in 1972 and 1973. But these suits were filed in May 1968 and January 1971, and the courts should "beware of efforts to defeat injunctive relief by protestations of repentence and reform, especially when abandonment seems timed to anticipate suit." *United States* v. *Oregon Medical Society,* 343 U.S. 326, 333. The courts below therefore properly looked to the time of filing suit as relevant in determining liability. See Pet. App. 28 and cases there cited. In any event, the government sought and the court below granted seniority relief only for blacks and Spanish-surnamed Americans hired prior to March 1971—at a time when the

[5] See Teamsters Pet. 16, n. 26. See also *United States* v. *Navajo Freight Lines, Inc.*, 525 F. 2d 1318 (C.A. 9); *United States* v. *Roadway Express, Inc.*, 457 F. 2d 854 (C.A. 6) (sustaining consent decree entered after trial commenced). Use of statistical data to help establish liability in employment discrimination cases has been the consistent practice of the lower courts. See Pet. App. 23, n. 27.

existence of T.I.M.E.–D.C.'s exclusionary practices was clear (Pet. App. 12).[6]

Petitioners also attack the refusal of the court of appeals to apply the four analytical steps outlined by this Court in *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802. But as this Court noted in *Green,* while those steps may be useful in determining whether discrimination exists in an individual case, they are by no means exclusive even in such cases. 411 U.S. at 804–805. Moreover, in a case involving an employer's general policy and practice with respect to minority employment, the courts need not engage in an exhaustive case-by-case analysis of the treatment of each minority employee. Indeed, this Court explicitly commented in *Green* that statistics as to a company's employment policy may be extremely significant in a "pattern and practice" suit. 411 U.S. at 805. Here, of course, the strong statistical evidence of T.I.M.E.–D.C.'s discriminatory policies was buttressed by a "massive amount" (Pet. App. 24) of testimony concerning individual discriminatory acts.

2. Petitioners also challenge the court of appeals' ruling that T.I.M.E.–D.C.'s minority employees are entitled to use their pertinent accumulated seniority in bidding for jobs from which they had been unlawfully excluded in the past. However, in the context

[6] In addition, petitioners' reliance upon hiring statistics in 1972 and 1973 is misplaced because much of the progress in those years was undoubtedly a result of the partial consent decree entered on May 12, 1972. See Pet. App. 28, n. 31, 85–93.

of a historical practice of excluding blacks and other minorities from better paying, more desirable, traditionally white jobs, a seniority system that requires those minorities to lose their accumulated seniority if they seek to transfer to a more desirable job necessarily perpetuates the effects of past discrimination. As the court of appeals observed (Pet. App. 24), "the minority employees were locked-in to the positions where they were initially discriminatorily assigned since they would be forced to forfeit their extensive accumulated seniority for bidding and layoff purposes upon transfer to the road." For this reason, every court of appeals that has considered the issue has ruled that such a seniority system must be modified in order for full relief under Title VII to be granted.[7] Furthermore, in the specific context of the trucking industry, the federal courts have consistently held that to the extent that the "unit seniority" provisions of the National Master Freight Agreement and its conference and area supplements con-

[7] See, *e.g.*, *United States* v. *Navajo Freight Lines, Inc.*, *supra*; *Head* v. *Timken Roller Bearing Co.*, 486 F. 2d 870 (C.A. 6); *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354 (C.A. 8); *United States* v. *Bethlehem Steel Corp.*, 446 F. 2d 652 (C.A. 2); *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791 (C.A. 4); *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (C.A. 7); *Local 189, United Papermakers & Paperworkers* v. *United States*, 416 F. 2d 980 (C.A. 5), certiorari denied, 397 U.S. 919. See also *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 409.

tinue the effects of past discrimination, they are unlawful.[8]

The correctness of these decisions is apparent. The congressional purpose behind the grant of remedial authority to the courts under Title VII, as expressed in the Section-by-Section Analysis of the 1972 Amendments to the Civil Rights Act, was to restore discriminatees "to a position where they would have been were it not for the unlawful discrimination." 118 Cong. Rec. 7565 (1972). The district courts were therefore authorized under Section 706(g) of the Act, as amended, 42 U.S.C. (Supp. IV) 2000e–5(g), to enjoin unlawful discriminatory practices and to "order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay * * *, or any other equitable relief as the court deems appropriate." Since, as the Teamsters freely concede (Pet. 19), seniority is one of the trucking industry employee's most precious possessions, courts necessarily must be permitted in an appropriate case to fashion a remedy involving retroactive seniority if they are to ensure that victims of past discrimination will be

[8] See, *e.g.*, *Hairston* v. *McLean Trucking Co.*, 520 F. 2d 226 (C.A. 4); *Sabala* v. *Western Gillette, Inc.*, 516 F. 2d 1251 (C.A. 5); *Thornton* v. *East Texas Motor Freight*, 497 F. 2d 416 (C.A. 6); *United States* v. *Navajo Freight Lines, Inc.*, *supra*; *United States* v. *Central Motor Lines, Inc.*, 338 F. Supp. 432 (W.D. N.C.).

restored to their "rightful place" in the company. The court below thus properly concluded that the discriminatees in this case were entitled to relief against T.I.M.E.–D.C.'s job classification seniority system.

The question of appropriate relief under Title VII from a seniority system that discriminates in effect if not by design has been before the courts frequently since 1968. With surprisingly little deviation, the courts have followed the "rightful place" doctrine and have held that minority employees who were assigned to the lower paying, less desirable jobs because of their race or national origin have the right, if they are qualified and desire to do so, to transfer to (when a vacancy occurs) and compete for the traditionally white jobs on the basis of their seniority with the company at the plant, rather than within the traditionally white unit. See, *e.g., Local 189, United Paper-makers & Paperworkers* v. *United States, supra,* and other cases cited p. 16, nn. 7, 8, *supra.* See also Note, *Title VII, Seniority Discrimination, and the Incumbent Negro,* 80 Harv. L. Rev. 1260 (1967).

In the trucking industry, the same principles have been followed and the same relief generally has been granted, although with respect to companies that have regularly required prior truck driving experience for a line driver position, the transferring minority employee who did not have such experience when hired has been held entitled to seniority dating from the time

he met that qualification.[9] See *Rodriguez* v. *East Texas Motor Freight,* 505 F. 2d 40 (C.A. 5); *Franks* v. *Bowman Transportation Co.,* 495 F. 2d 398 (C.A. 5), pending on writ of certiorari on another issue, No. 74–728; *Bing* v. *Roadway Express, Inc.,* 485 F. 2d 441 (C.A. 5); *Sabala* v. *Western Gillette, Inc., supra; Hairston* v. *McLean Trucking Co., supra; United States* v. *Navajo Freight Lines, Inc., supra; United States* v. *Central Motor Lines, Inc., supra.* The relief accorded by the court of appeals is fully consistent with these decisions.

Petitioners assert a conflict between *Thornton* v. *East Texas Motor Freight,* 497 F. 2d 416 (C.A. 6), and the decision below. In *Thornton,* a majority of a panel of the Sixth Circuit affirmed a district court order that limited seniority relief to those black employees who protested the company's restrictive prac-

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[9] Since T.I.M.E.–D.C. had no uniform systemwide experience requirement for line drivers, the court of appeals remanded to the district court to devise standards for determining qualification dates for discriminatees (Pet. App. 32).

T.I.M.E.–D.C. also challenges (Pet. 15–16) the right of minority employees in the affected class to use seniority accumulated in the less desirable jobs to bid for vacancies against white employees on layoff status in the traditionally white jobs. However, after determining that minority employees had been discriminated against and that the company and union layoff rules would "unduly impede the eradication of past discrimination" (Pet. App. 41), the court of appeals appropriately chose a remedy to place the discriminatees in their rightful place. See, *e.g., United States* v. *C & O Ry. Co.,* 471 F. 2d 582 (C.A. 4); *United States* v. *Jacksonville Terminal Co.,* 451 F. 2d 418, 450–451 (C.A. 5).

tices either by requesting a transfer or by filing a charge with the Equal Employment Opportunity Commission. 497 F. 2d at 419–421. Although that result is contrary to the decision of the court of appeals in the present case and the holdings in the other trucking industry cases cited above, the majority in *Thornton* did not apply a contrary principle of seniority relief. Indeed, the *Thornton* court expressly purported to follow the "rightful place" doctrine as enunciated by the Fifth Circuit. 497 F. 2d at 419–420. The governing consideration in the majority opinion in *Thornton* apparently was the extent of deference due to the discretion of the trial judge in fashioning relief. In its three-page discussion of the seniority remedy (as in its discussion of back pay), the court of appeals referred at least three times to the district court's discretion, and concluded by stating that the district court had not abused its discretion in fashioning the seniority remedy. 497 F. 2d at 419–421. Similarly, Chief Judge Phillips in his dissenting opinion in *Thornton* (497 F. 2d at 427) relied upon the Fourth Circuit's decision in *Moody* v. *Albemarle Paper Co.*, 474 F. 2d 134, vacated and remanded on other grounds, 422 U.S. 405, for the proposition that too much deference had been given to the discretion of the trial court.

While we agree with Chief Judge Phillips' dissenting opinion as to the remedy that should have been afforded in *Thornton*, any error of the majority was

due, we believe, to excessive deference to the discretion of the district court in fashioning relief.[10] In any event, subsequent to *Thornton* the Sixth Circuit has adopted the "rightful place" doctrine interpreted by the Fifth Circuit in *Local 189, United Papermakers & Paperworkers* v. *United States, supra,* and the decision below. In *Equal Employment Opportunity Commission* v. *Detroit Edison Co.*, 515 F. 2d 301 (C.A. 6), pending on petitions for a writ of certiorari, Nos. 75–220, 75–221, 75–239, and 75–393, the court unanimously held that black employees hired and assigned to less desirable jobs pursuant to a practice of discrimination generally should be given plant-wide seniority for bidding and promotion within traditionally white jobs and departments and, citing the dissenting opinion in *Thornton*, that such seniority should be "available regardless of whether an employee actually sought a transfer previously." 515 F.2d at 316. Therefore, any conflict between the Sixth Circuit and other circuits on this issue has been resolved.[11]

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[10] This Court, in the interim, has addressed the issue of the extent of deference that an appellate court should give to a district court in Title VII cases. *Albemarle Paper Co.* v. *Moody*, *supra*, 422 U.S. at 415–422.

[11] Moreover, the majority of black employees of the East Texas Motor Freight Company, including many of the those employed at the Memphis terminal that was a subject of the *Thornton* case, were awarded full seniority carryover of the kind contemplated in the present case in *United States* v. *East Texas Motor Freight*, 10 FEP Cases 971 (N.D. Tex.).

3. Finally, the Teamsters contend that the court below erred in affirming the district court's refusal to dismiss the suit with regard to seniority relief on the ground that the local unions of the Teamsters were indispensable parties to the litigation (Pet. 28–31). The local unions, of course, are signatories to the collective bargaining agreements. But as noted above, see pp. 7–8 *supra*, the National Master Freight Agreement and the conference and area supplements are negotiated nationally by a Negotiating Committee chaired and appointed by the General President and are ratified not by the locals, but by the membership at large. Indeed, the signature of the local unions appears superfluous, because the Teamsters' constitution provides that the collective bargaining agreement becomes binding on all affected locals upon ratification by a majority of the nationwide Teamsters voting.

As a practical matter, then, the collective bargaining agreements that perpetuate past discrimination were negotiated on a national and conference basis by the International, were ratified by the membership of the International, and are administered in significant part by the International. In these circumstances, to hold that the local unions (which are scattered across the country) are indispensable parties would be to exalt form over substance. Moreover, there never has been any dispute that the International Brotherhood of Teamsters (or a subordinate body of the International such as a conference) is an adequate representative of the seniority interests of its members created by those collective bargaining agreements and that full and effective relief can be granted against the International. See *United States* v. *Navajo Freight Lines, Inc., supra; Sabala* v. *Western Gillette, Inc., supra; Rodriguez* v. *East Texas Motor Freight, supra; United States* v. *Roadway Express, Inc., supra.*[12]

[12] The Teamsters apparently assert an intracircuit conflict within the Fifth Circuit as a basis for certiorari. (Pet. 29). Even apart from the fact that this Court need not resolve such disputes, there is no such conflict. In *Rodriguez* and in two other decisions rendered the same days (*Herrera* v. *Yellow Freight System, Inc.*, 505 F. 2d 66, and *Resendis* v. *Lee Way Motor Freight, Inc.*, 505 F. 2d 69), the Fifth Circuit held the Southern Conference of Teamsters and a local union responsible for the collective bargaining agreements, but pointed out that the negotiations were conducted by the Southern Conference and that the signature of the locals was merely a formality. 505 F. 2d at 60. In *Herrera* and *Resendis*, the court found no violation of Title VII by the International. As the constitution of the Teamsters makes clear, the Southern Conference, like other conferences, is a "subordinate" body of the Teamsters and is "subject to the unqualified supervision, direction and control of the General President" of the International (Appendix, *infra*, p. 2a). In no case has the Fifth Circuit (or any other court) dismissed a Title VII complaint on the grounds that the local unions were indispensable parties.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1976.

APPENDIX

Excerpts from Constitution adopted by the Miami Beach, Fla., Convention, July 4–7, 1966, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

1. ARTICLE IX—GENERAL EXECUTIVE BOARD—DUTIES AND POWERS

GENERAL

Section 1. Such powers, duties and authority as are not otherwise delegated to the General President and General Secretary-Treasurer of the International Union shall be exercised, acted upon and determined by the General Executive Board. The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention. The General Executive Board shall have governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed in this Constitution.

2. ARTICLE XVIII—TRANSFER AND WITHDRAWAL CARDS

DUTY TO ACCEPT TRANSFER CARD

Section 1. It shall be compulsory upon every Local Union to accept the transfer card of a member in good standing with any Local Union of the International Union, without any extra charge or fees, except as set forth in the International Constitution

[sic]: provided, however, the member seeking to transfer has already obtained employment within the jurisdiction of the Local Union; provided further the member seeking to transfer shall comply with all rules and regulations set forth in this Constitution respecting transfer; and provided further he shall comply with rules and regulations of the Local Union and its Constitution and Bylaws. A member who has transferred to a Local Union shall be entitled to the rights and privileges of membership in the Local Union in accordance with the rules and regulations of the Local Union.

3. ARTICLE XVI—CONFERENCES

ESTABLISHMENT

Section 1. Experience has demonstrated that State, Multi-State, Multi-Area or National and Area Conferences and Trade Divisions are of value to this International Union and its affiliates. Therefore, Conferences and Trade Divisions shall be organized and chartered as subordinate bodies of the International Union for such geographical area, industries or companies as the General Executive Board may from time to time direct. They shall be at all times subject to the unqualified supervision, direction and control of the General President and they shall function under the rules prescribed by the Bylaws approved by the General President. A Policy Committee for the Conferences shall be elected by the delegates to such Conferences in accordance with the applicable provisions of Conference Bylaws. The International Constitution shall supersede Conference Bylaws in the event of conflict.

* * * * *

AREA, MULTI-AREA OR NATIONAL, COMPANY-WIDE OR INDUSTRY-WIDE CONTRACTS

Section 4(a). If a majority of the affiliated Local Unions vote for area, multi-area or national, company-wide or industry-wide negotiations for an area, national, company-wide or industry-wide contract, all involved affiliated Local Unions shall be bound by such vote, must participate in such area, multi-area or national, company-wide or industry-wide bargaining and shall be bound by the contract approved as provided below. Upon completion of negotiations by a Conference, Trade Division, or by any Committee appointed by the General President, subject to the approval of the General Executive Board, to engage in negotiation of an industry, area, multi-area or national or company-wide contract, such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.

If a majority of the votes cast by Local Union members voting approve such contract it shall become binding and effective upon all Local Unions involved and their members. Local Unions which are parties to such contracts may not withdraw from such bargaining unit except upon six (6) months notice and for good cause shown to the satisfaction of the appropriate Conference, Trade Division or Committee, and approved by the General Executive Board of the International Union. If any Local Union believes that an area, multi-area or national, company-wide or industry-wide contract proposal will deprive its involved members of better existing conditions of general application to all such involved members of the Local Union it may appeal to the General Executive Board which shall have the final authority to determine whether such alleged better general conditions shall

be continued or shall yield to the overall gains of the proposed contract. Unless mutually agreed to, no Local Union shall suffer an economic loss * * *.

Such negotiating committees shall have the authority, with the approval of the General Executive Board, to conduct ratification votes and strike votes on such area, multi-area or national company-wide, industry wide, or Local Union basis as the committee shall determine, and in the event the strike is authorized, the said committee shall have the authority, with the approval of the General Executive Board, to direct that the strike be conducted on such area, multi-area or national, company-wide, industry-wide, Local or such other selective basis as the committee shall determine; provided, however, that the results of ratification or rejection votes with respect to national agreements shall be determined on a cumulative basis of all votes cast by all affected voting members in all areas, with a cumulative majority vote necessary for acceptance, and a cumulative two-thirds (2/3) vote necessary for rejection of the final offer and strike authorization as provided in this Constitution. The requirement that the employer's final offer of settlement can be rejected only by two-thirds (2/3) vote shall not apply during a strike.

This Article shall be broadly interpreted to carry out the intent and purpose of permitting national negotiations and national agreements in any industry in which the International Brotherhood of Teamsters has jurisdiction.

4. ARTICLE VII—GENERAL SECRETARY-TREASURER—DUTIES AND POWERS

GENERAL DUTIES

* * * * *

ISSUANCE OF CHARTER

Section 3. All charter applications must be signed by no less than seven (7) prospective members employed within the jurisdiction of the International Union, and before final issuance, must be approved by the General President, the General Secretary-Treasurer and the General Executive Board.

All Local Union charter applications must initially be submitted to the Joint Council or to the Conference (if there is no Joint Council) having jurisdiction in the area, which shall then forward such application to the General Secretary-Treasurer with an indication of whether such application has the approval or disapproval of such body. All other charter applications shall be submitted directly to the General Secretary-Treasurer. The General Secretary-Treasurer shall submit all charter applications to the General Executive Board. In determining whether to issue a Local Union charter, the General President, the General Secretary-Treasurer and the General Executive Board shall take into consideration, but shall not be bound by, the position of the Joint Council or Conference in the matter.

5. ARTICLE VI—GENERAL PRESIDENT—DUTIES AND POWERS

GENERAL DUTIES

Section 1(a). The General President shall preside at the Convention of the International Brotherhood of Teamsters and conduct the same in conformity with this Constitution. He shall have the deciding vote in case of a tie on any question that is being voted on by the Convention. He shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the officers of the

International Union, subject to the approval of the majority of the General Executive Board.

(b). The General President shall have general supervision over the affairs of the International Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

* * * * *

APPROVAL OF BYLAWS OF LOCAL UNIONS

Section 4(a). Bylaws of Local Unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President. If the General President fails to approve the Bylaws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

* * * * *

POWER OF GENERAL PRESIDENT TO APPOINT TRUSTEES; DUTIES AND OBLIGATIONS OF LOCAL UNIONS UNDER TRUSTEESHIP

Section 5(a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic proce-

dures or preventing any action which is disruptive of or interferes with the performance or obligations of other members of Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; * * *.

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